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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 205

GUY T. HELVERING, Commissioner of Internal Revenue,
Petitioner,

v.

GERALD A. EUBANK.

BRIEF FOR THE RESPONDENT

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October, 1940.

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BRIEF FOR THE RESPONDENT

Opinions Below

The opinion of the Board of Tax Appeals (R. 14)* is reported in 39 B. T. A. 583. The opinion of the Circuit Court of Appeals (R. 71) is reported in 110 F. (2d) 737.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on April 12, 1940 (R. 73). The petition for a writ of certiorari was filed July 3, 1940, and granted October 14, 1940 (R. 78). The jurisdiction of this Court rests on Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

Statement

In his statement of the question presented, the petitioner speaks (Petitioner's Brief, p. 2) of renewal com-

* References to the Record are to the page numbers of the original record. The printed transcript was not received in time to permit references to the page numbers thereof.

missions on policies "sold" by the respondent. It should be noted that the respondent herein, whether as a partner or as an individual proprietor, was a *general* agent of the life insurance companies, not a subagent; and that the commissions in question did not result solely from his efforts, but from those of his partner and the subagents as well (R. 43-58). To put it differently, the right to commissions which the taxpayer assigned is not quite accurately described as direct compensation for his personal services, but rather as one of the residual assets of a business formerly carried on by him.

In his presentation of the facts, the petitioner states (Petitioner's Brief, p. 3) that the respondent assigned "his interest in the renewal commissions." We wish to point out that the respondent assigned whatever interest he had in the agency contracts (R. 15, 17-19). However, in our view, this distinction is immaterial for the reason that no matter whether the assignment be looked upon as an assignment merely of commissions or of a contract right, the substance of the transaction was the same. The agency contracts had completely terminated prior to the assignments except for the respondent's right to receive the renewal commissions. This right, which was not conditioned on the rendition of future services by the respondent (R. 41), was the only right left in the contracts; and when the respondent effectively assigned it to another, he completely divested himself of whatever rights he possessed in the contracts.

Summary of Argument

1. We agree with the position taken by the Government in *Helvering* v. *Horst*, No. 27, that under the principles of *Helvering* v. *Clifford*, 309 U. S. 331, the status of assigned income for income tax purposes turns upon

the fact of ownership or control, actual or constructive, of the property which produces the income. Accordingly, if the transferor has completely divested himself of ownership or control over ~~his~~ the income and the property which produces it, as did the taxpayer in the instant case, such income is not taxable to him, but to the assignee.

2. *Lucas* v. *Earl,* 281 U. S. 111, which held that a husband could not escape tax by assigning income which was dependent upon his future services is merely an application of the rule that the income is taxable to the individual who owns or controls the income-producing property. The *Earl* case related to an assignment of the direct earnings of the assignor and hence is distinguishable from the instant situation which involves not an assignment of the earnings of the respondent, but rather of a separate income-producing contract right received by the respondent in the course of his business. That this contract right resulted in part from the services of the assignor should not make it different from any other property right, the complete transfer of which shifts tax to the assignee. This court has held that an assignment of trust income by a life beneficiary frees him from tax on the assigned income. *Blair* v. *Commissioner,* 300 U. S. 5. It has also been held by the lower courts, without conflict, that an assignment of patent royalties, *Nelson* v. *Ferguson,* 56 F. (2d) 121 (C. C. A. 3rd, 1932), cert. den. 286 U. S. 565, or an assignment of dividends, *Matchette* v. *Helvering,* 81 F. (2d) 73 (C. C. A. 2d, 1936), cert. den. 289 U. S. 677, where the assignor surrenders ownership of the property from which the income emanates, relieves the assignor of tax. If the owner of inherited or purchased property is able to shift tax on the income by disposing of the property, there is no sound reason for withholding that privilege from one who has, through personal effort, created or acquired a

property right, such as a right to renewal commissions. Section 22(a) of the Revenue Act of 1932, which defines gross income, makes no distinction between income produced by a contract right emanating from compensation for personal services and any other kind of income.

The *Earl* case does not lay down any hard and fast rule that earnings are always taxable to the earner. This is conclusively shown by the fact that if Earl is still alive and living in California, which is now a community property state, he is taxable on only half of his earnings, his wife being taxable on the other half. *U. S.* v. *Malcolm,* 282 U. S. 792, following *Poe* v. *Seaborn,* 282 U. S. 101. The weight of authority is to the effect that the doctrine of *Lucas* v. *Earl* is applicable only to assignments of income which is in some degree owned or controlled by the assignor.

Argument

1. The taxable status of assigned income depends upon ownership or control of the property which produces the income; and since the respondent did not retain any such ownership or control, he is not taxable on the income.

The Government's first point is that the general principles discussed in its brief in *Helvering* v. *Horst,* No. 27, require the taxpayer herein to remain liable for tax on the income received by his assignee. We submit that, on the contrary, these principles require the opposite conclusion. In its brief in the *Horst* case, the Government relies primarily on *Helvering* v. *Clifford,* 309 U. S. 331 and on *Reinecke* v. *Smith,* 289 U. S. 172. In the *Smith* case, this Court cited *Burnet* v. *Leininger,* 285 U. S. 136 and *Lucas* v. *Earl,* 281 U. S. 111, as authority for the following statement (289 U. S. at 177):

> "This Court has repeatedly said that such an assignment, *where the assignor continued to own the corpus,*

does not immunize him from taxation upon the income." (Italics supplied.)

he decision in the *Clifford* case was merely an applica-on of this rule. It was held that the grantor of a short erm trust remained taxable on the trust income, notwith-tanding that such income was set apart for his wife, be-ause he had retained so many of the attributes of owner-hip of the trust corpus, that his ownership of that corpus id not cease, for income tax purposes, with the creation f the trust.[1]

The essential corollary of the rule enunciated in the *mith* case, *supra*, must be that if the transferor does *not* ontinue to own or retain control over the property which roduces the income, he is no longer taxable. Thus, in a

[1] In a footnote on pages 5 and 6 of his brief, the peti-ioner has sought to inject a new issue into the instant case, o wit, the nature of the trust to which the commissions in uestion were assigned, presumably to show that the *Clif-ord* case is applicable. We submit that it was improper or the petitioner to introduce into the case facts which re not contained in the record. The Government has hroughout treated the trust as a separate taxable entity, nd the application of the trust income has never been raised before. Thus, the Board in its opinion states (R. 22): "* * * the pleadings raise no question about the se of the commissions in question, so that this is not a case of income attributable to an assignor or settlor by reason of application of the income for his use or benefit." In any event, the unfavorable inferences in the petitioner's footnote could be overcome if necessary. Thus, it could be shown that the taxpayer was in fact taxed with the premiums on policies of insurance covering his life and with income that was used to discharge his obligations. More-over, we believe that if the trust income and deductions were merged with those of the taxpayer, the aggregate tax, because of losses sustained by the trust, would be less than the amount actually paid.

case like *Blair* v. *Commissioner, supra,* where the assignor had nothing to assign but his inherited right to income—he was merely the life beneficiary of a testamentary trust—and he assigned that right, retaining nothing, he was not taxed on the income. On the other hand, in *Burnet* v. *Leininger, supra,* where a member of a partnership assigned to his wife, without making her a partner, a portion of his share of the partnership profits, he was taxed for the reason that his efforts and the continued ownership of his partnership interest were essential to the realization of income by his assignee.[2] In other words, he still retained a measure of control and ownership over the property which produced the income. Similarly, in *Lucas* v. *Earl,* where the assignment was merely of future earnings, Earl continued to exercise control over the income because only through his personal efforts could any income be realized. The will to work is not susceptible of assignment and hence an assignment of future earnings can never convey the property which produces the income. On the other hand, in an assignment, not of earnings, but of the *product* of past earnings, where the assignee's right to the income from that product is in no way dependent upon the will of the assignor, the latter has not retained the property which gives rise to the income. The distinction is clearly brought out in *Hall* v. *Burnet,* 54 F. (2d) 443 (App. D. C. 1931), cert. den. 285 U. S. 552, a case on all fours with the present one, as follows:

> "* * * if what was here sought to be conveyed from the husband to the wife was salary, or personal earnings, the same would still be taxable to him though he never actually received it, but in the view we take of the case, what was assigned was neither income nor

[2] The cases cited on page 10 of petitioner's brief—*Balkwill, Kàsch* and *Rossmoore*—involved similar unsuccessful attempts to make the assignee a partner.

earnings, but property. It was not an assignment of future earnings but the transfer of a property right, and though this property right gave rise to future income, uncertain and contingent though it might be as to amount, that fact does not destroy the distinction. In this case, the contract between appellant and the insurance company gave him a property right in all renewal premiums on all business written for the company by him or by others during the period of the contract. Undoubtedly, his right to these commissions would survive his death and would pass to his estate to the same extent and in the same way as other property which he then possessed. In these circumstances, it is obvious that the right was fixed and certain, and was independent of any future service to be rendered by him. Any uncertainty in the situation concerned only the amount; but the agent's rights as against the insurance company were established. When, therefore, the contract was assigned to his wife, a property right passed to her, as capable of assignment as any other sort of property; for instance, as rents to accrue from a lease for a term of years, or royalties from a patent."

Making use of the metaphor employed by Mr. Justice HOLMES in the *Earl* case, the fruits are taxable to whoever owns the tree. This is the ground upon which the Government rests in the *Horst* case, and we believe it to be correct. However, in the instant case the Government has confused the seed with the tree. The taxpayer's services, *i. e.*, the seed, produced the right to renewal commissions, which would correspond to the tree; and the renewal commissions themselves when actually paid would correspond to the fruit. Similarly, the labors of an author might culminate in a copyright, or the services of an inventor might produce a patent. In each case the seed would be the services and the tree would be the copyright or the patent.

The royalties payable under the copyright or the patent would constitute the fruit. If the author or inventor were to assign his copyright or patent to his wife, the Government would not contend that he remained taxable on the royalties received by his wife. See *G. C. M. 19,213,* 1937-2 C. B. 220, cited on page 14 of the Government's brief; also *Lilienfeld* v. *Commissioner,* 35 B. T. A. 391, acquiesced in by the petitioner C. B. 1937-1, 15. These situations are perfectly analogous to the instant case: The efforts of the taxpayer produced the right to renewal commissions; he assigned this right to another, retaining no ownership or control whatsoever. The right produced income. What logic can there be in taxing to the assignor the produce of one kind of right created by personal effort and taxing to the assignee the produce of another kind of right so created? Suppose the insurance company in the instant case had compensated the taxpayer by assigning to him a patent and the taxpayer had in turn assigned the patent to another. Would the Government continue to maintain that the taxpayer remained taxable on the income from the patent? A reasonable answer to these questions compels the conclusion that an assignment of a property right derived from past earnings, like the assignment of any other property right, relieves the assignor of tax.

2. **The contract right to receive the renewal commissions in question, even though it may have resulted from services of the assignor, constituted a property right capable of assignment; and the disposition of that right did not correspond to an assignment of earnings. Lucas v. Earl, 281 U. S. 111 distinguished.**

The Government rests virtually its whole case on *Lucas* v. *Earl,* which involved the question of whether Earl could be taxed on all the salaries and attorney fees earned by him in 1920 and 1921, or whether he should be taxed on only half of them, in view of a contract he had made with his

wife many years before the income tax law became effective, by which they agreed that any property either of them might thereafter acquire, whether by earnings or otherwise, should be treated as owned by them jointly. In his brief opinion holding that Earl could not escape tax on his salaries and fees by an anticipatory arrangement, Mr. Justice HOLMES made the statement that the "statute could tax salaries to those who earned them."

The commissions involved in this case were not wholly the product of services personally rendered by the taxpayer.[3] Assuming, however, *arguendo,* that the commissions were entirely the result of respondent's individual efforts, *Lucas* v. *Earl* does not require that they be taxed to him. That case related to earnings *qua* earnings and

[3] The respondent was a general agent, not a subagent, of the insurance companies and the commissions in question resulted from policies sold by others as well as himself. By far the greatest portion of such commissions was derived from the Hart & Eubank partnership contract with the Aetna Life Insurance Company (R. 42). The Agency created by that contract was to Hart as well as Eubank, and it cannot plausibly be said that the commissions arising out of that contract were attributable solely to the efforts of Eubank. Therefore, even under a literal application of the *Lucas* v. *Earl* doctrine, the commissions in question should not be taxed to the respondent assignor. The nature of a life insurance general agency is indicated in *Van Meter* v. *Commissioner,* 22 B. T. A. 1202 (at 1203), where the Board denied personal service classification to a corporation engaged in that business on the ground that, although the stockholders contributed personal services to the conduct of the agency, most of the income came from commissions paid on insurance written by employed agents. *Edwards* v. *Keith,* 231 Fed. 110, cert. den. 243 U. S. 638, relied on by petitioner (pp. 6-7 of his brief) to establish that life insurance renewal commissions constitute compensation for personal services, did not pose that question. The point was conceded and the only issue was whether the income accrued before or after March 1, 1913.

not to a separately disposable contract right received as compensation for services. If Earl had received a fee in the form of an interest in a patent and had assigned that interest to his wife, he would have escaped tax on the patent royalties. *G. C. M. 19,213, supra, Lilienfeld* v. *Commissioner, supra; Nelson* v. *Ferguson,* 56 F. (2d) 121 (C. C. A. 3rd, 1932), cert. den. 286 U. S. 565. This result would follow even if the patent, when received by Earl, had no ascertainable value and hence added nothing to his taxable income. The number of contract rights received as compensation which have no immediately ascertainable value could be multiplied. Thus, the receipt of a right to the use of characters in a comic strip (*Fontaine Fox,* 37 B. T. A. 271), a right to a pension (*Geo. O. Knapp,* 40 B. T. A. 1144), a right to good will (*Helvering* v. *Seatree,* 72 F. (2d) 67, App. D. C. 1934), does not, when received, add anything to the taxable income of the recipient because it is then incapable of reasonably accurate valuation. Yet the assignment of such a right operates to shift the tax on the resulting income to the assignee. Similarly, in the instant case, respondent, on termination of his agency contract, received an assignable right to renewal commissions. This right may have constituted compensation for services, but the commissions themselves did not. To repeat the metaphor previously used, the tree, *i. e.,* the right, was received by the respondent and transferred to another who received the fruit, *i. e.,* the renewal commissions.[4] The efforts of the taxpayer constituted merely the seed from which the tree grew.

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[4] It was not certain at the time of transfer that the tree would ever bear fruit. That depended solely on the payment of future premiums by the policy holders. But the ownership of the tree had irrevocably passed to the assignee. The Board erroneously concluded (R. 25) that the taxpayer's assignee did not acquire any legal title to

The Government seizes upon the statement in the *Earl* opinion that the "statute could tax salaries to those who earned them" as a springboard from which to establish a sweeping doctrine that earnings are always taxable to the earner. However, this Court itself has pointed out that no such sweeping doctrine was intended to be set up by the *Earl* decision, for Earl himself, if he is still alive and earning salaries and fees, is no longer taxable on all of his compensation for personal services. California, in which he resided, is now a community property state, and as a consequence Earl would be taxable on only half of such compensation. *U. S.* v. *Malcolm,* 282 U. S. 792, fol-

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the future commission payments. In reaching this conclusion, it confused the assignment of future *earnings* with the assignment of future *payments* arising out of past earnings. That the assignment of future income payments over which the assignor retains no control conveys a property right is established by cases like *Blair* v. *Commissioner, supra,* and *Hall* v. *Burnet, supra.* The Board's remark (R. 25) that the "insurance companies did not accept in writing the assignment of future commissions made by petitioner," and that, although they paid the commissions to the assignee, "they were not legally obligated to do so" was wholly gratuitous and at variance with the stipulated facts. The stipulation contains copies (R. 61, 67) of the acknowledgments by the insurance companies of the receipt of the instruments of assignment, and the stipulation specifically provides (R. 42) that the commissions were paid to the assignee *by virtue of such instruments.* Similarly, the Board's observation (R. 25) that the rights assigned were *future rights* is without foundation. The agency contracts had terminated at the time of assignment and could not thereafter be altered by either the assignor or the insurance company. The assignee acquired an indefeasible right *in praesenti* to the commissions which might be payable in the future; the *amounts* to become payable were contingent and unascertained, but not the right to receive such amounts: *Knevals* v. *Blauvelt,* 82 Me. 458, 19 Atl. 818 (1890).

lowing *Poe* v. *Seaborn*, 282 U. S. 101; *Goodell* v. *Koch*, 282 U. S. 118; and *Hopkins* v. *Bacon*, 282 U. S. 122.

In *Poe* v. *Seaborn* this Court referred to the *Earl* case and said (282 U. S. at p. 117):

> "• • • We held that, assuming the validity of the contract under local law, it still remained true that the husband's professional fees, earned in years *subsequent to the date of the contract*, were his individual income, 'derived from salaries, wages, or compensation for personal services'. • • • The very assignment in that case was bottomed on the fact that the earnings would be the husband's property, else there would have been nothing on which it could operate." (Italics ours.)

The Government argues that this Court in the *Earl* case put no stress on the fact that the compensation involved therein represented future earnings, but we submit that the italicized portion of the above quotation from *Poe* v. *Seaborn*, unless it is to be shorn of all meaning, clearly indicates that weight *was* attached to the fact that in the *Earl* case, control of the income (and hence ownership for tax purposes) remained in Earl.

The weight of authority in the lower courts, notably the court below, is also to the effect that *Lucas* v. *Earl* does not require the assignor to remain taxable where, as in the instant case, the income received by the assignee was not in any way subject to the control of the assignor.[5]

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[5] Decisions of the court below: *Commissioner* v. *Field*, 42 F. (2d) 820 (C. C. A. 2nd, 1930); *Lowery* v. *Helvering*, 70 F. (2d) 713 (C. C. A. 2nd, 1934); *Rossmoore* v. *Commissioner*, 76 F. (2d) 520 (C. C. A. 2nd, 1935); *Matchette* v. *Helvering*, 81 F. (2d) 73 (C. C. A. 2nd, 1936), cert. den. 298 U. S. 677; *Shanley* v. *Bowers*, 81 F. (2d) 13 (C. C. A. 2nd, 1936); *Horst* v. *Commissioner*, 107 F. (2d) 906 (C. C. A. 2nd, 1936). Of these cases, the *Rossmoore* case was decided in favor of the Government and we believe that the

The cases cited by the Government on pages 11 and 12 of its brief nearly all involved assignments of income which was controlled to some extent by the transferor.[6] The line of demarcation between cases controlled by *Lucas* v. *Earl* and those to which it is not applicable is succinctly pointed out by Judge LEARNED HAND in his opinion in *Rossmoore* v. *Commissioner*, 76 F. (2d) 520 (C. C. A. 2d, 1935), wherein he states (at p. 521):

> "• • • That decision [referring to *Burnet* v. *Leininger*, 285 U. S. 136] was avowedly a corollary of *Lucas* v. *Earl*, 281 U. S. 111, a case where the husband gave an interest in his future earnings to his wife. *Nothing turned upon the form of the transfer and everything upon the fact that the assignor remained in control of the income, since it was only through his*

Horst case was incorrectly decided in favor of the taxpayer; but the opinions in all of the cases cited support the statement in the text.

Decisions by other courts: *Hall* v. *Burnet*, 54 F. (2d) 443 (App. D. C. 1931), cert. den. 285 U. S. 552; *Commissioner* v. *Ross*, 83 F. (2d) 18 (C. C. A. 6th, 1938); *Nelson* v. *Fergusont*, 56 F. (2d) 121 (C. C. A. 3rd, 1932), cert. den. 286 U. S. 565; *Commissioner* v. *O'Donnell*, 90 F. (2d) 907 (C. C. A. 9th, 1937), reversed on another point 303 U. S. 370; *Helvering* v. *Seatree*, 72 F. (2d) 67 (App. D. C. 1934).

Decisions by the Board of Tax Appeals: *Walter L. Ross*, 30 B. T. A. 496 (1934), approved sub nom. *Commissioner* v. *Ross*, *supra*; *Julius E. Lilienfeld*, 35 B. T. A. 391 (1937); *Fontaine Fox*, 37 B. T. A. 271 (1938); *Geo. O. Knapp*, 40 B. T. A. 1144 (1939); *Eugene Siegel, Executor*, 20 B. T. A. 563, appeal dismissed 59 F. (2d) 1055 (C. C. A. 6th, 1931); *J. H. Philbin*, B. T. A. Docket No. 81,815, memorandum opinion promulgated August 10, 1936, C. C. H., B. T. A. Service, Par. 9472-R; *Ralph M. Lovejoy*, B. T. A. Docket No. 93,197, memorandum opinion promulgated April 28, 1939, C. C. H., B. T. A. Service, Par. 10,679-S.

[6] The only cases which we believe to be squarely opposed to our position are *Emery* v. *Commissioner*, 78 F. (2d) 437 (C. C. A. 1st, 1935), and, at least in principle,

> *continued efforts that it could be earned.* That is equally true though the assignor be a partner and have only an indirect interest in the earnings through his share in the profits; *any future earnings which he can assign are conditioned upon his continued efforts and remain in that sense at his disposition. That is the critical factor;* the legal scaffolding is of no consequence. * * * " (Italics ours.)

Judge HAND elaborated on this thought in the *Matchette* case (involving tax on an assigned dividend) in which he said (81 F. (2d) at pp. 74, 75):

> "* * * We thought that the doctrine [of *Lucas* v. *Earl* and *Burnet* v. *Leininger*] was limited to the assignment of future earnings, because these were necessarily left within the assignor's power, his continued activity being a condition upon them. Only so could we see how the transfer of earnings differed from that of any other chose in action payable in the future. * * *"

The *Earl* case states that the question turns on the import and reasonable construction of the taxing act. We accept that touchstone, and propose to show by a few examples that the adoption of an unlimited doctrine that earnings are always taxable to the earner would produce

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Van Meter v. *Commissioner*, 61 F. (2d) 817 (C. C. A. 8th, 1933). The reasoning in the *Emery* case seems cloudy in view of the fact that *Hall* v. *Burnet, supra*, is cited with approval; while the *Van Meter* case is distinguishable on its facts. See respondent's brief in opposition to the petition for certiorari, p. 6. *Bishop* v. *Commissioner*, 54 F. (2d) 298 (C. C. A. 7th, 1931), and *Parker* v. *Routzahn*, 56 F. (2d) 730 (C. C. A. 6th, 1932), cert. den. 287 U. S. 606 are clearly distinguishable from *Hall* v. *Burnet* and the present case, and the Government has said so in its brief opposing certiorari in the *Parker* case. See respondent's brief in opposition to the petition for certiorari, page 5.

results that are not merely unreasonable, but absurd. Suppose an agent owning a right to renewal commissions becomes bankrupt and the right to such commissions is sold by the trustee in bankruptcy to an outsider. Would the Government still maintain that the agent was taxable on the commissions paid to the purchaser because they were earned by the agent? Suppose the agent had sold his right to the future commissions, would he be subject to tax not only on the proceeds of sale, but on the larger amount of commissions as well because he had "earned" these commissions? Or suppose the agent had died owning the right to receive the renewal commissions. Application of the sweeping doctrine advocated by the Government would require him to be taxed after his death. This view was specifically rejected in *Seattle First National Bank* v. *Henricksen,* 24 F. Supp. 256 (W. D. Wash., 1938), appeal dismissed 100 F. (2d) 1015) (C. C. A. 9, 1939), which held that the value at the date of death of the right to receive renewal commissions is not taxable to the agent in his final return under Section 42 of the 1934 Revenue Act, requiring the inclusion in such final return of all income accrued up to the death of the taxpayer. To cite one other example of the impracticable results that would follow were this Court to depart from the reasonable rule that income is taxable to the one who owns the property from which it arises: if the agent were to assign the right to commissions to another, without consideration, and were later to become unable to pay the tax, the Government would completely lose tax on such income.

The Government, on page 14 of its brief, cites *G. C. M. 19,213 supra,* in support of its view that a right to income which stems from personal services is to be treated differently from income which derives from a trust (*Blair* v. *Commissioner, supra*) or a patent (*Julius Lilienfeld,*

supra) or stock (*Matchette* v. *Helvering, supra*). We submit, however, that the reasoning of this ruling is specious and finds no support in the statute. The general definition of gross income in Section 22(a) does not distinguish between a right that represents compensation for services and compensation for the use of a patent, dividends, etc. Furthermore, as already pointed out, the royalties from a patent are ordinarily just as much the result of effort on the part of someone as commissions. The only difference between a patent and a right that represents compensation for services is evidential, not substantial; the former is expressed in a document issued by the patent office, the latter may have less formal expression. But leaving aside formalities, both arise out of past services.

The Government closes its brief with the argument that if the decision of the court below is affirmed, the opportunity for tax avoidance will be alarming. We disagree with this conclusion. The present situation is not a common one; few individuals receive compensation in the form of a contract right which may or may not give rise to future income. The principle for which respondent contends in this case would not permit anyone to avoid tax on ordinary income from personal services by assignment before or after the services are performed. The contention of the respondent in this case simply is that a future commissions contract in the nature of a royalty contract, such as is here involved—the income from which is in no way dependent upon future services of the assignor, and the income from which has not yet arisen, and will arise, if at all, by the happening of events over which the assignor has no control—may be assigned so as to relieve the assignor of the tax on the income therefrom *in just the same way that the same sort of property arising from sources other than personal services* may be assigned so as to re-

ieve the assignor of tax. The right to assign a contract of his character arising from personal services offers no more pportunity for tax avoidance than the right to assign a imilar contract arising from any other source. There is o sound reason why one who inherits property should be ble to shift tax on the income therefrom by assigning the roperty, while one who acquires similar property by his abors should be denied that privilege.

Conclusion

The judgment of the court below should be affirmed.

Respectfully submitted,

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